

HOUSE _____ AMENDMENT NO. ____

Offered By

AMEND House Committee Substitute No. 2 for Senate Bill No. 976, Section 386.266, Page 97,
Line 84 by inserting after all of said section the following:

“402.205. 1. [The families, friends and guardians of] Persons who have a disability [or],
as defined in section 402.200, or persons who are eligible for services provided by the department
of mental health, or both, may participate in a trust which may supplement the care, support, and
treatment of such persons pursuant to the provisions of sections 402.199 to 402.220. Neither the
contribution to the trust for the benefit of a life beneficiary nor the use of trust income to provide
benefits shall in any way reduce, impair or diminish the benefits to which such person is otherwise
entitled by law; and the administration of the trust shall not be taken into consideration in
appropriations for the department of mental health to render services required by law.

2. Unless otherwise prohibited by federal statutes or regulations, all state agencies shall
disregard the trust as a resource when determining eligibility of Missouri residents for assistance
under chapter 208, RSMo.

3. The assets of the board of trustees and assets held in trust pursuant to the provisions of
sections 402.199 to 402.220 shall not be considered state money, assets of the state or revenue for
any purposes of the state constitution or statutes. The property of the board of trustees and its
income and operations shall be exempt from all taxation by the state or any of its political
subdivisions.

402.210. 1. There is hereby created the "Missouri Family Trust Board of Trustees", which

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1 shall be a body corporate and an instrumentality of the state. The board of trustees shall consist of
2 nine persons appointed by the governor with the advice and consent of the senate. The members'
3 terms of office shall be three years and until their successors are appointed and qualified. The
4 trustees shall be persons who are not prohibited from serving by sections 105.450 to 105.482,
5 RSMo, and who are not otherwise employed by the department of mental health. The board of
6 trustees shall be composed of the following:

7 (1) Three members of the immediate family of persons who have a disability [or are the
8 recipients of services provided by the department in the treatment of mental illness] of mental
9 illness. The advisory council for comprehensive psychiatric services, created pursuant to section
10 632.020, RSMo, shall submit a panel of nine names to the governor, from which he shall appoint
11 three. One shall be appointed for a term of one year, one for two years, and one for three years.
12 Thereafter, as the term of a trustee expires each year, the Missouri advisory council for
13 comprehensive psychiatric services shall submit to the governor a panel of not less than three nor
14 more than five proposed trustees, and the governor shall appoint one trustee from such panel for a
15 term of three years;

16 (2) Three members of the immediate family of persons who [are recipients of services
17 provided by the department in the habilitation of the mentally retarded or developmentally
18 disabled] have a developmental disability. The Missouri advisory council on mental retardation
19 and developmental disabilities, created pursuant to section 633.020, RSMo, shall submit a panel
20 of nine names to the governor, from which he shall appoint three. One shall be appointed for one
21 year, one for two years and one for three years. Thereafter, as the term of a trustee expires each
22 year, the Missouri advisory council on mental retardation and developmental disabilities shall
23 submit to the governor a panel of not less than three nor more than five proposed trustees, and the
24 governor shall appoint one trustee from such panel for a term of three years;

25 (3) Three persons who are recognized for their expertise in general business matters and
26 procedures. Of the three business people to be appointed by the governor, one shall be appointed
27 for one year, one for two years and one for three years. Thereafter, as the term of a trustee expires
28 each year, the governor shall appoint one business person as trustee for a term of three years.

29 2. The trustees shall receive no compensation for their services. The trust shall reimburse

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1 the trustees for necessary expenses actually incurred in the performance of their duties.

2 3. As used in this section, the term "immediate family" includes spouse, parents, parents
3 of spouse, children, spouses of children and siblings.

4 4. The board of trustees shall be subject to the provisions of sections 610.010 to 610.120,
5 RSMo.

6 5. The board of trustees shall annually prepare or cause to be prepared an accounting of
7 the trust funds and shall transmit a copy of the accounting to the governor, the president pro
8 tempore of the senate and the speaker of the house of representatives.

9 6. The board of trustees shall establish policies, procedures and other rules and regulations
10 necessary to implement the provisions of sections 402.199 to 402.220.

11 402.215. 1. The board of trustees is authorized and directed to establish and administer
12 the Missouri family trust and to advise, consult with, and render services to departments and
13 agencies of the state of Missouri and to other nonprofit organizations which qualify as
14 organizations pursuant to Section 501(c)(3) of the United States Internal Revenue Code of 1986,
15 as amended, and which provide services to Missouri residents with a disability. The board shall
16 be authorized to execute all documents necessary to establish and administer the trust including
17 the formation of a not-for-profit corporation created pursuant to chapter 355, RSMo, and to
18 qualify as an organization pursuant to Section 501(c)(3) of the United States Internal Revenue
19 Code of 1986, as amended.

20 2. The trust documents shall include and be limited by the following provisions:

21 (1) The Missouri family trust shall be authorized to accept contributions from any source
22 including trustees, personal representatives, personal custodians pursuant to chapter 404, RSMo,
23 and other fiduciaries, and, subject to the provisions of subdivision [(11)] (10) of this subsection,
24 from the life beneficiaries and their respective spouses, to be held, administered, managed,
25 invested and distributed in order to facilitate the coordination and integration of private financing
26 for individuals who have a disability or are eligible for services provided by the Missouri
27 department of mental health, or both, while maintaining the eligibility of such individuals for
28 government entitlement funding. All contributions, and the earnings thereon, shall be
29 administered as one trust fund; however, separate accounts shall be established for each

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1 designated beneficiary. The income earned[, after deducting administrative expenses,] shall be
2 credited to the accounts of the respective life beneficiaries in proportion to the principal balance in
3 the account for each such life beneficiary, to the total principal balances in the accounts for all life
4 beneficiaries;

5 (2) Every donor may designate a specific person as the life beneficiary of the contribution
6 made by such donor. In addition, each donor may name a cotrustee, including the donor, and a
7 successor or successors to the cotrustee, to act with the trustees of the trust on behalf of the
8 designated life beneficiary; provided, however, a life beneficiary shall not be eligible to be a
9 cotrustee or a successor cotrustee[; provided, however, that]_. Court approval of the specific
10 [person] persons designated as life beneficiary and as cotrustee or successor trustee shall be
11 required [in connection with] at the time any trust is created pursuant to section 473.657, RSMo,
12 or section 475.093, RSMo;

13 (3) The cotrustee, with the consent of the trust, shall from time to time [but not less
14 frequently than annually] determine the amount of income or principal or income and principal to
15 be used to provide noncash benefits and the nature and type of benefits to be provided for the life
16 beneficiary. Any net income which is not used shall be added to principal annually. In the event
17 that the trust and the cotrustee shall be unable to agree either on the amount of income or principal
18 or income and principal to be used or the benefits to be provided, then either the trust or the
19 cotrustee shall have the right to request that the matter be resolved by arbitration which shall be
20 conducted in accordance with the Commercial Arbitration Rules of the American Arbitration
21 Association. The requesting party shall send a written request for arbitration to the responding
22 party and shall in such request set forth the name, address and telephone number of such
23 requesting party's arbitrator. The responding party shall, within ten days after receipt of the
24 request for arbitration, set forth in writing to the requesting party the name, address and telephone
25 number of the responding party's arbitrator. Copies of the request for arbitration and response
26 shall be sent to the director of the department. If the two designated arbitrators shall be unable to
27 agree upon a third arbitrator within ten days after the responding party shall have identified such
28 party's arbitrator, then the director of the department shall designate the third arbitrator by written
29 notice to the requesting and responding parties' arbitrators. The three arbitrators shall meet,

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1 conduct a hearing, and render a decision within thirty days after the appointment of the third
2 arbitrator. A decision of a majority of the arbitrators shall be binding upon the requesting and
3 responding parties. Each party shall pay the fees and expenses of such party's arbitrator and the
4 fees and expenses of the third arbitrator shall be borne equally by the parties. Judgment on the
5 arbitrators' award may be entered in any court of competent jurisdiction;

6 (4) Any donor, during his or her lifetime, except for a trust created pursuant to section
7 473.657, RSMo, or section 475.093, RSMo, may revoke any gift made to the trust; provided,
8 however, any donor may, at any time, voluntarily waive the right to revoke. In the event that at
9 the time the donor shall have revoked his or her gift to the trust the life beneficiary shall not have
10 received any benefits provided by use of trust income or principal, then an amount equal to one
11 hundred percent of the principal balance shall be returned to the donor. Any undistributed net
12 income shall be distributed to the charitable trust. In the event that at the time the donor shall
13 have revoked his or her gift to the trust the life beneficiary shall have received any benefits
14 provided by the use of trust income or principal, then an amount equal to ninety percent of the
15 principal balance shall be returned to the donor. The balance of the principal balance together
16 with all undistributed net income shall be distributed to the charitable trust;

17 (5) Any acting cotrustee, except a cotrustee of a trust created pursuant to section 473.657,
18 RSMo, or section 475.093, RSMo, other than the original donor of a life beneficiary's account,
19 shall have the right, for good and sufficient reason upon written notice to the trust and the
20 department stating such reason, to withdraw all or a portion of the principal balance. In such
21 event, the applicable portion, as set forth in subdivision (7) of this subsection, of the principal
22 balance shall then be distributed to the successor trust and the balance of the principal balance
23 together with any undistributed net income shall be distributed to the charitable trust;

24 (6) In the event that a life beneficiary for whose benefit a contribution or contributions
25 shall have been made to the family trust shall cease to [be eligible for services provided by the
26 department of mental health] have a disability as defined in section 402.200 and neither the donor
27 nor the then acting cotrustee, except a cotrustee of a trust created pursuant to section 473.657,
28 RSMo, or section 475.093, RSMo, shall revoke or withdraw the applicable portion, as set for in
29 subdivision (7) of this subsection, of the principal balance, then the board of trustees may, by

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1 written notice to such donor or acting cotrustee, terminate the trust as to such beneficiary and
2 thereupon shall distribute the applicable portion, as set forth in subdivision (7) of this subsection,
3 of the principal balance, to the trustee of the successor trust to be held, administered and
4 distributed by such trustee in accordance with the provisions of the successor trust described in
5 subdivision (12) of this subsection;

6 (7) If at the time of withdrawal or termination as provided in subdivision (6) of this
7 subsection of a life beneficiary's account from the trust either the life beneficiary shall not have
8 received any benefits provided by the use of the trust income or principal or the life beneficiary
9 shall have received benefits provided by the use of trust income or principal for a period of not
10 more than five years from the date a contribution shall have first been made to the trust for such
11 life beneficiary, then an amount equal to ninety percent of the principal balance shall be
12 distributed to the successor trust, and the balance of the principal balance together with all
13 undistributed net income shall be distributed to the charitable trust; provided, however, if the life
14 beneficiary at the time of such withdrawal by the cotrustee or termination as provided above shall
15 have received any benefits provided by the use of trust income or principal for a period of more
16 than five years from the date a contribution shall have first been made to the trust for such life
17 beneficiary, then an amount equal to seventy-five percent of the principal balance shall be
18 distributed to the successor trust, and the balance of the principal balance together with all
19 undistributed net income shall be distributed to the charitable trust;

20 (8) Subject to the provisions of subdivision (9) of this subsection, if the life beneficiary
21 dies before receiving any benefits provided by the use of trust income or principal, then an amount
22 equal to one hundred percent of the principal balance shall be distributed to such person or
23 persons as the donor shall have designated. Any undistributed net income shall be distributed to
24 the charitable trust. If at the time of death of the life beneficiary, the life beneficiary shall have
25 been receiving benefits provided by the use of trust income or principal or income and principal,
26 then, in such event, an amount equal to seventy-five percent of the principal balance shall be
27 distributed to such person or persons as the donor designated, and the balance of the principal
28 balance, together with all undistributed net income, shall be distributed to the charitable trust;

29 (9) In the event the trust is created as a result of a distribution from a personal

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1 representative of an estate of which the life beneficiary is a distributee, then if the life beneficiary
2 dies before receiving any benefits provided by the use of trust income or principal, an amount
3 equal to one hundred percent of the principal balance shall be distributed to such person or
4 persons who are the life beneficiary's heirs at law. Any undistributed income shall be distributed
5 to the charitable trust. If at the time of death of the life beneficiary the life beneficiary shall have
6 been receiving benefits provided by the use of trust income or principal or income and principal,
7 then, an amount equal to seventy-five percent of the principal balance shall be distributed to such
8 person or persons who are the life beneficiary's heirs at law. The balance of the principal balance
9 together with all undistributed income shall be distributed to the charitable trust. If there are no
10 heirs at the time of either such distribution, the then-principal balance together with all
11 undistributed income shall be distributed to the charitable trust;

12 (10) In the event the trust is created [as a result of the recovery of damages by reason of a
13 personal injury to the life beneficiary, then if the life beneficiary dies before receiving any benefits
14 provided by the use of trust income or principal, the state of Missouri shall receive all amounts
15 remaining in the life beneficiary's account up to an amount equal to the total medical assistance
16 paid on behalf of such life beneficiary under a state plan under Title 42 of the United States Code,
17 and then to the extent there is any amount remaining in the life beneficiary's account, an amount
18 equal to one hundred percent of the principal balance shall be distributed to such person or
19 persons who are the life beneficiary's heirs at law. If there are no heirs, the balance, if any, of the
20 principal balance together with all undistributed income shall be distributed to the charitable trust.
21 If at the time of death of the life beneficiary the life beneficiary should have been receiving
22 benefits provided by the use of trust income or principal or income and principal then the state of
23 Missouri shall receive all amounts remaining in the life beneficiary's account up to an amount
24 equal to the total medical assistance paid on behalf of such life beneficiary under a state plan
25 under Title 42 of the United States Code, and then to the extent there is any amount remaining in
26 the life beneficiary's account, an amount equal to seventy-five percent of the principal balance
27 shall be distributed to such person or persons who are the life beneficiary's heirs at law and the
28 balance of the principal balance together with all undistributed income shall be distributed to the
29 charitable trust. If there are no heirs, the balance of the principal balance, together with all

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undistributed income, shall be distributed to the charitable trust;

(11) In the event an account is established] with the proceeds from the recovery of damages by reason of a personal injury to the life beneficiary or with the assets of the beneficiary by the beneficiary, a family member, the beneficiary's guardian, or pursuant to a court order, all in accordance with Title 42 of the United States Code Section 1396p(d)(4)(A) or Section 1396p(d)(4)(C), then upon the death of the life beneficiary the state of [Missouri] residence of the beneficiary shall receive all amounts remaining in the life beneficiary's account up to an amount equal to the total medical assistance paid on behalf of such life beneficiary under a state plan under Title 42 of the United States Code[, and then] ("State Plan"); except that twenty-five percent of the principal balance shall first be distributed to the charitable trust. To the extent there is any amount remaining in the life beneficiary's account, [an amount equal to seventy-five percent of] the principal balance shall be distributed to such person or persons who are the life beneficiary's heirs at law [and the balance of the principal balance together with all undistributed income shall be distributed to the charitable trust]. If there are no heirs, the balance of the principal balance together with all undistributed income shall be distributed to the charitable trust. In the event that two or more states are entitled to receive reimbursement for medical assistance paid on behalf of a beneficiary and the total of such medical assistance is in excess of the balance in the beneficiary account, then each such state shall be paid an amount equal to that portion of the beneficiary's account as is equal to the portion of the total medical assistance paid by each such state;

[(12)] (11) Notwithstanding the provisions of subdivisions (4) to (8) of this subsection to the contrary, the donor may voluntarily agree to a smaller percentage of the principal balance in any account established by such donor than is provided in this subsection to be returned to the donor or distributed to the successor trust, as the case may be; and a corresponding larger percentage of the principal balance in such account to be distributed either to the charitable trust or to a designated restricted account within the charitable trust;

[(13)] (12) Upon receipt of a notice of withdrawal from a designated cotrustee, other than the original donor, and a determination by the board of trustees that the reason for such withdrawal is good and sufficient, or upon the issuance of notice of termination by the board of

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1 trustees, the board of trustees shall distribute and pay over to the designated trustee of the
2 successor trust the applicable portion of the principal balance as set forth in subdivision (7) of this
3 subsection; provided, however, that court approval of distribution to a successor trustee shall be
4 required in connection with any trust created pursuant to section 473.657, RSMo, or section
5 475.093, RSMo.

6 The designated trustee of the successor trust shall hold, administer and distribute the principal
7 and income of the successor trust, in the discretion of such trustee, for the maintenance, support,
8 health, education and general well-being of the beneficiary, recognizing that it is the purpose of
9 the successor trust to supplement, not replace, any government benefits for the beneficiary's basic
10 support to which such beneficiary may be entitled and to increase the quality of such beneficiary's
11 life by providing the beneficiary with those amenities which cannot otherwise be provided by
12 public assistance or entitlements or other available sources. Permissible expenditures include, but
13 are not limited to, more sophisticated dental, medical and diagnostic work or treatment than is
14 otherwise available from public assistance, private rehabilitative training, supplementary
15 education aid, entertainment, periodic vacations and outings, expenditures to foster the interests,
16 talents and hobbies of the beneficiary, and expenditures to purchase personal property and
17 services which will make life more comfortable and enjoyable for the beneficiary but which will
18 not defeat his or her eligibility for public assistance. Expenditures may include payment of the
19 funeral and burial costs of the beneficiary. The designated trustee, in his or her discretion, may
20 make payments from time to time for a person to accompany the beneficiary on vacations and
21 outings and for the transportation of the beneficiary or of friends and relatives of the beneficiary to
22 visit the beneficiary. Any undistributed income shall be added to the principal from time to time.
23 Expenditures shall not be made for the primary support or maintenance of the beneficiary,
24 including basic food, shelter and clothing, if, as a result, the beneficiary would no longer be
25 eligible to receive public benefits or assistance to which the beneficiary is then entitled. After the
26 death and burial of the beneficiary, the remaining balance of the successor trust shall be
27 distributed to such person or persons as the donor shall have designated;

28 [(14)] (13) The charitable trust shall be administered as part of the family trust, but as a
29 separate account. The income attributable to the charitable trust shall be used to provide benefits

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1 for individuals who have a disability [or who are eligible for services provided by or through the
2 department and who either have no immediate family or whose immediate family, in the
3 reasonable opinion of the trustees, is financially unable to make a contribution to the trust
4 sufficient to provide benefits for such individuals, while maintaining such individuals' eligibility
5 for government entitlement funding] and who have no income or very limited income other than
6 benefits. The trustees may from time to time determine to use part of the principal of the
7 charitable trust to provide such benefits. [As used in this section, the term "immediate family"
8 includes parents, children and siblings. The individuals to be beneficiaries of the charitable trust
9 shall be recommended to the trustees by the department and others from time to time.] The
10 trustees shall annually determine the amount of charitable trust income or principal to be used to
11 provide benefits and the nature and type of benefits to be provided for each identified beneficiary
12 of the charitable trust. Any income not used shall be added to principal annually;

13 [(15)] (14) Any person, with the consent of the board of trustees, may establish a
14 restricted account within the charitable trust and shall be permitted to determine, with the consent
15 of the board of trustees, the beneficiaries of such restricted account provided such beneficiaries
16 qualify as participants of the trust as set forth in subsection 1 of section 402.205.

17 402.217. 1. No beneficiary shall have any vested or property rights or interests in [the
18 family] any trust established for the benefit of such beneficiary, nor shall any beneficiary have the
19 power to anticipate, assign, convey, alienate, or otherwise encumber any interest in the income or
20 principal of the [family] trust, nor shall such income or the principal or any interest of any
21 beneficiary thereunder be liable for any debt incurred by such beneficiary, nor shall the principal
22 or income of the [family] trust be subject to seizure by any creditor or any beneficiary under any
23 writ or proceeding in law or in equity.

24 2. Except for the right of a donor to revoke any gift made to the trust, pursuant to
25 subdivision (4) of subsection 2 of section 402.215, and the right of any acting cotrustee, other than
26 the original donor, to withdraw all or a portion of the principal balance, pursuant to subdivision
27 (5) of subsection 2 of section 402.215, neither the donor nor any acting cotrustee shall have the
28 right to sell, assign, convey, alienate or otherwise encumber, for consideration or otherwise, any
29 interest in the income or principal of the family trust, nor shall such income or the principal or any

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1 interest of any beneficiary thereunder be liable for any debt incurred by the donor or any acting
2 cotrustee, nor shall the principal or income of the family trust be subject to seizure by any creditor
3 of any donor or any acting cotrustee under any writ or proceeding in law or in equity.”; and
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5 Further amend said bill by amending the title, enacting clause, and intersectional references
6 accordingly.
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